

REFERENCE TITLE: **schools; postemployment benefits.**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# **HB 2497**

Introduced by  
Representative Crandall

**AN ACT**

**AMENDING SECTION 11-952.01, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 10, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1225; RELATING TO SCHOOL DISTRICTS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-952.01, Arizona Revised Statutes, is amended to read:

11-952.01. Public agency pooling of property, fidelity, liability, workers' compensation, life, health, accident and disability coverage; exemptions; board of trustees; contract; termination; audit; insolvency; definition

A. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance, including prepaid legal insurance or reinsurance, or to pool retention of their risks for property, fidelity and liability losses and to provide for the payment of such property loss, fidelity loss, prepaid legal insurance or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out ~~the provisions of~~ this section in their behalf directly or by contract with a private party.

B. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out ~~the provisions of~~ this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

C. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance or may pool retention of their risks of loss for life, disability, health or accident claims made against any public agency member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

- 1           1. On a cooperative or contract basis.
- 2           2. By the formation of a nonprofit corporation.
- 3           3. By contracts or intergovernmental agreements with the Arizona
- 4 health care cost containment system administration.
- 5           4. By the execution of a trust agreement directly by the agencies or
- 6 by contracting with a third party.
- 7           D. In addition to other authority granted pursuant to this title, two
- 8 or more public agencies may enter into contracts or agreements pursuant to
- 9 this article for the joint purchasing of insurance for property, liability or
- 10 workers' compensation losses or to pool retention of their risks for property
- 11 and liability loss to cover the public agency, its elected officials and
- 12 employees and the contractor and subcontractor of every tier engaged in the
- 13 performance of a construction project for the public agency. Public agencies
- 14 may establish pools for the purpose of this subsection by any of the
- 15 following methods:
- 16           1. On a cooperative or contract basis.
- 17           2. By the formation of a nonprofit corporation.
- 18           3. By the execution of a trust agreement directly by the agencies or
- 19 by contracting with a third party.
- 20           E. Section 10-11301 does not apply to nonprofit corporations formed
- 21 pursuant to this section.
- 22           F. Title 41, chapter 23 does not apply to the procurement of insurance
- 23 or reinsurance, or to the procurement of the services provided for in
- 24 subsection K, paragraph 8 of this section, by any pool established pursuant
- 25 to this section.
- 26           G. Title 43 does not apply to any pool established pursuant to this
- 27 section. Any pool established pursuant to this section is exempt from
- 28 taxation under title 43.
- 29           H. Each pool shall be operated by a board of trustees consisting of at
- 30 least three persons who are elected officials or employees of public entities
- 31 within this state. The board of trustees shall notify the director of the
- 32 department of insurance of the existence of the pool and shall file with the
- 33 director and with the attorney general a copy of the intergovernmental
- 34 agreement or contract. The attorney general shall file a copy of the
- 35 agreement or contract with the secretary of state as required by section
- 36 11-952. The board of trustees of each group shall do all of the following:
- 37           1. Establish terms and conditions of coverage within the pool,
- 38 including exclusions of coverage.
- 39           2. Ensure that all claims are paid promptly.
- 40           3. Take all necessary precautions to safeguard the assets of the
- 41 group.
- 42           4. Maintain minutes of its meetings.
- 43           5. Designate an administrator to carry out the policies established by
- 44 the board of trustees and to provide day-to-day management of the group and

1 delineate in the written minutes of its meetings the areas of authority it  
2 delegates to the administrator.

3 6. If the pool is a workers' compensation pool, file a copy of the  
4 agreement with the director of the industrial commission.

5 I. If the pool includes private, nonprofit educational institutions,  
6 each private, nonprofit educational institution shall post a bond, cash  
7 deposit or other comparable financial security in an amount that is equal to  
8 at least one and one-half times the amount of the private, nonprofit  
9 educational institution's annual premium to ensure payment of the school's or  
10 institution's legal liabilities and other obligations if the pool is  
11 determined to be insolvent or is otherwise found to be unable to discharge  
12 the pool's legal liabilities and other obligations pursuant to subsection N  
13 of this section.

14 J. The board of trustees shall not:

15 1. Extend credit to individual members for payment of a premium,  
16 except pursuant to payment plans established by the board.

17 2. Borrow any monies from the group or in the name of the group except  
18 in the ordinary course of business.

19 K. In addition to the requirements of section 11-952, a contract or  
20 agreement made pursuant to this section shall contain the following:

21 1. A provision for a system or program of loss control.

22 2. A provision for termination of membership, including either:

23 (a) Cancellation of individual members of the pool by the pool.

24 (b) Election by an individual member of the pool to terminate its  
25 participation.

26 3. A provision requiring the pool to pay all claims for which each  
27 member incurs liability during each member's period of membership.

28 4. A provision stating that each member is not relieved of its  
29 liability incurred during the member's period of membership except through  
30 the payment of losses by the pool or by the member.

31 5. A provision for the maintenance of claim reserves equal to known  
32 incurred losses and an estimate of incurred but not reported claims.

33 6. A provision for a final accounting and settlement of the  
34 obligations of or refunds to a terminating member to occur when all incurred  
35 claims are concluded, settled or paid.

36 7. A provision that the pool may establish offices where necessary in  
37 this state and employ necessary staff to carry out the purposes of the pool.

38 8. A provision that the pool may retain legal counsel, actuaries,  
39 auditors, engineers, private consultants and advisors.

40 9. A provision that the pool may make and alter bylaws and rules  
41 pertaining to the exercise of its purpose and powers.

42 10. A provision that the pool may purchase, lease or rent real and  
43 personal property it deems necessary.

44 11. A provision that the pool may enter into financial services  
45 agreements with banks and other financial institutions, that it may issue

1 checks in its own name and that it may invest its monies in equity  
2 securities, mutual funds and investment funds registered with the United  
3 States securities and exchange commission, debt obligations and any eligible  
4 investment permitted by section 35-323.

5 L. A pool or a terminating member shall provide at least ninety days'  
6 written notice of the termination or cancellation. A workers' compensation  
7 pool shall notify the industrial commission of the termination or  
8 cancellation of a member thirty days before the termination or cancellation  
9 of the member.

10 M. The pool shall be audited annually at the expense of the pool by a  
11 certified public accountant, with a copy of the report submitted to the  
12 governing body or chief executive officer of each member of the pool and to  
13 the director of the department of insurance. The board of trustees of the  
14 pool shall obtain an appropriate actuarial evaluation of the claim reserves  
15 of the pool, including an estimate of the incurred but not reported claims.  
16 The department of insurance shall examine each public agency pool once every  
17 five years. The director of the department of insurance may examine a public  
18 agency pool sooner than five years from the preceding examination if the  
19 director has reason to believe that the pool is insolvent. The costs of any  
20 examination shall be paid by the pool subject to the examination.

21 N. If, as a result of the annual audit or an examination by the  
22 director of the department of insurance, it appears that the assets of the  
23 pool are insufficient to enable the pool to discharge its legal liabilities  
24 and other obligations, the director of the department of insurance shall  
25 notify the administrator and the board of trustees of the pool of the  
26 deficiency and the director's list of recommendations to abate the  
27 deficiency, including a recommendation not to add any new members until the  
28 deficiency is abated. If the pool fails to comply with the recommendations  
29 within sixty days after the date of the notice, the director shall notify the  
30 chief executive officer or the governing bodies, if any, of the members of  
31 the pool, the governor, the president of the senate and the speaker of the  
32 house of representatives that the pool has failed to comply with the  
33 recommendations of the director.

34 O. If a pool is determined to be insolvent or is otherwise found to be  
35 unable to discharge its legal liabilities and other obligations, each  
36 agreement or contract shall provide that the members of the pool shall be  
37 assessed on a pro rata basis as calculated by the amount of each member's  
38 annual contribution in order to satisfy the amount of deficiency. The  
39 assessment shall not exceed the amount of each member's annual contribution  
40 to the pool.

41 P. A pool established pursuant to this section may make available  
42 programs providing for insurance coverages described in subsections A, B and  
43 C of this section to those charter schools governed by section 15-183,  
44 subsection M and, except for a workers' compensation pool, to private,  
45 nonprofit educational institutions.

Q. In addition to the authority set forth in this title, a pool established pursuant to this section may invest public monies on behalf of pool members, but any such investments shall be limited to those permitted by section 35-323, EXCEPT AS PROVIDED IN SECTION 15-1225, SUBSECTION G. A pool established pursuant to this section may not invest monies that are required by law to be deposited with a county treasurer.

R. A pool established pursuant to this section, by the adoption of a resolution of continuing effect, may authorize and request the state treasurer to invest funds for the pool pursuant to section 35-326.

S. For the purposes of this section, "health benefits plan" means a hospital or medical service corporation policy or certificate, a health care services corporation contract, a multiple employer welfare arrangement or any other arrangement under which health and medical benefits and services are provided to two or more persons.

Sec. 2. Title 15, chapter 10, article 8, Arizona Revised Statutes, is amended by adding section 15-1225, to read:

15-1225. Postemployment benefits; trust accounts; actuarial report

A. IF THE GOVERNING BOARD OFFERS POSTEMPLOYMENT BENEFITS TO SCHOOL DISTRICT EMPLOYEES OR TO SPOUSES AND DEPENDENTS OF SCHOOL DISTRICT EMPLOYEES, OR BOTH, MONIES TO FUND THESE BENEFITS MAY BE DEPOSITED IN AN OTHER POSTEMPLOYMENT BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT, OR BOTH. ADDITIONAL MONIES SHALL NOT BE LEGISLATIVELY APPROPRIATED SPECIFICALLY TO PROVIDE ANY POSTEMPLOYMENT BENEFITS OFFERED BY A GOVERNING BOARD.

B. AN OTHER POSTEMPLOYMENT BENEFITS FUND IS A CASH CONTROLLED FUND AS PROVIDED IN SECTION 15-905, SUBSECTION N. THE MONIES IN THE OTHER POSTEMPLOYMENT BENEFITS FUND ARE NOT SUBJECT TO REVERSION, EXCEPT THAT AT THE END OF FIVE YEARS OF NO ACTIVITY IN THE FUND, ANY REMAINING MONIES SHALL REVERT TO THE MAINTENANCE AND OPERATIONS FUND.

C. AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL MEET ALL OF THE FOLLOWING CONDITIONS:

1. CONTRIBUTIONS MADE BY THE SCHOOL DISTRICT INTO THE TRUST ACCOUNT ARE IRREVOCABLE.

2. THE ASSETS OF THE TRUST ACCOUNT SHALL BE DEDICATED TO PROVIDING BENEFITS TO SCHOOL DISTRICT RETIREES AND THEIR BENEFICIARIES IN ACCORDANCE WITH THE TERMS OF THE POSTEMPLOYMENT BENEFITS PLAN.

3. TRUST ASSETS SHALL BE LEGALLY PROTECTED FROM CREDITORS OF THE SCHOOL DISTRICT OR THE INVESTMENT MANAGER PURSUANT TO SUBSECTION F OF THIS SECTION.

D. CURRENT OR PRIOR YEAR POSTEMPLOYMENT BENEFITS LIABILITIES MAY BE PAID FROM ANY SCHOOL DISTRICT FUND FROM WHICH A SCHOOL DISTRICT MAY PAY EMPLOYEE BENEFITS INTO THE OTHER POSTEMPLOYMENT BENEFITS FUND OR TRUST ACCOUNT. PAYMENTS FOR CURRENT OR PRIOR YEAR LIABILITIES PAID INTO THE OTHER

1 POSTEMPLOYMENT BENEFITS FUND OR TRUST ACCOUNT SHALL BE TREATED AS AN  
2 EXPENDITURE FROM THE ORIGINATING SCHOOL DISTRICT FUND.

3 E. THE FOLLOWING EXPENDITURES MAY BE MADE FROM AN OTHER POSTEMPLOYMENT  
4 BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT:

5 1. ADMINISTRATIVE AND MANAGEMENT COSTS.

6 2. PAYMENT OF BENEFITS.

7 F. AN INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST  
8 ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE EITHER:

9 1. A QUALIFIED INVESTMENT MANAGER APPOINTED BY THE DISTRICT GOVERNING  
10 BOARD.

11 2. THE MANAGER OF A PUBLIC AGENCY POOL ESTABLISHED PURSUANT TO SECTION  
12 11-952.01.

13 G. THE INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST  
14 ACCOUNT MAY INVEST AND REINVEST THE MONIES IN THE ACCOUNT AND MAY HOLD,  
15 PURCHASE, SELL, ASSIGN, TRANSFER AND DISPOSE OF ANY OF THE SECURITIES AND  
16 INVESTMENTS IN WHICH ANY OF THE TRUST ACCOUNT MONIES ARE INVESTED. THE  
17 INVESTMENT MANAGER SHALL INVEST THE MONIES IN THE TRUST ACCOUNT IN THE SAME  
18 MANNER AS THE MONIES IN THE PERMANENT STATE LAND FUND PURSUANT TO SECTION  
19 35-314.01, EXCEPT THAT NOT MORE THAN THIRTY PER CENT OF THE MONIES IN THE  
20 TRUST ACCOUNT MAY BE INVESTED IN EQUITY SECURITIES AT ANY TIME. THE  
21 PERCENTAGE OF INVESTMENT SHALL BE CALCULATED AT COST.

22 H. EACH SCHOOL DISTRICT SHALL ANNUALLY SUBMIT ON OR BEFORE SEPTEMBER 1  
23 TO THE JOINT LEGISLATIVE BUDGET COMMITTEE AN ACTUARIAL STUDY OF EXISTING AND  
24 PROSPECTIVE OTHER POSTEMPLOYMENT BENEFITS OFFERED BY THE SCHOOL DISTRICT,  
25 INCLUDING AN ANALYSIS OF DEFINED CONTRIBUTION PLANS AND DEFINED BENEFITS  
26 PLANS.

27 I. FOR THE PURPOSES OF THIS SECTION, POSTEMPLOYMENT BENEFITS DO NOT  
28 INCLUDE BENEFITS PROVIDED BY THE ARIZONA STATE RETIREMENT SYSTEM.